

# Montana State Legislature

2011 Session

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HB

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# STATE OF MONTANA BOARD OF PARDONS AND PAROLE



## BIENNIAL REPORT January 2011

# **STATE OF MONTANA**

## **BOARD OF PARDONS AND PAROLE**

### **2011 Biennial Report**

**Governor Brian Schweitzer**



**Craig Thomas**  
**Executive Director**



**Michael McKee**  
**Board Chair**

**REPORT PREPARED BY:**  
**Craig Thomas, Executive Director**  
**Christine Slaughter, Parole Board Analyst**  
**Julie Thomas, Senior Parole Board Analyst**

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# BOARD OF PARDONS AND PAROLE GOALS, OBJECTIVES, AND DUTIES

## MISSION STATEMENT

The Board of Pardons and Parole, as part of the criminal justice process, serves all Montana citizens by administering a flexible system of punishment, which fully protects society. All employees and members of the Board of Pardons and Parole are committed to securing the effective application of and improvements to the clemency and release system as well as of the laws upon which they are based. The parole process is administered in an effective, humane, safe, and just fashion.

## VISION STATEMENT

The Montana Board of Pardons and Parole envisions a parole and pardon system that promotes fair and consistent decisions based on public safety, victim concerns, successful inmate re-entry and sensible use of state resources.

## STATUTORY AUTHORITY

- 2-15-121, MCA: Defines the administrative attachment of the Board of Pardons and Parole.
- 2-15-124, MCA: Define the requirements of quasi-judicial boards.
- 2-15-Part 23, MCA: Establishes the Board of Pardons and Parole and defines the composition, terms, appointments, allocation, and quasi-judicial status, and compensation of the Board.
- 46-18-Part 1, MCA: Establishes state correctional policy and preliminary procedures.
- 46-23-Part 1, MCA: Establishes and defines the general provisions of the Board of Pardons and Parole.
- 46-23-Part 2, MCA: Establishes the general provisions for granting parole and defines the authority and responsibilities of the Board of Pardons and Parole.
- 46-23-Part 3, MCA: Establishes and defines the conditions, authorities, and responsibilities of the Board of Pardons and Parole for Executive Clemency.
- 46-23-Part 10, MCA: Establishes and defines the conditions, authority, and responsibilities for supervision and revocation.
- 10 FTE
- Executive Director
  - Parole Board Analysts (5)
  - Administrative Support (4)
  - Citizen Board Members (7)

## 2011 BIENNIUM BUDGET REQUESTS

<u>Present Law</u>	<u>FY 2012</u>	<u>FY 2013</u>
Parole Board Member Compensation	\$6,700	\$6,700
<u>Total Requests</u>	<u>\$6,700</u>	<u>\$6,700</u>

## **BOARD OF PARDONS AND PAROLE - 10.0 FTE**

### **EXECUTIVE DIRECTOR (Craig Thomas)**

- Directs the daily operation of the Board of Pardons and Parole
- Represents the Board in matters of policy, interdepartmental cooperation, and communications with political and judicial bodies
- Oversees all matters of personnel, budget, and distribution of work

### **SENIOR PAROLE BOARD ANALYST (Julie Thomas)**

- Assumes duties of Executive Director in his absence
- Gathers and analyzes information and makes recommendations to the Board on inmate release risk
- Victim Services Coordinator
- Prepares parole reports and makes release recommendations

### **PAROLE BOARD ANALYST (Fern Osler – Billings Office)**

- Responsible for Montana Women's Prison, Billings Pre-Release Centers and Dawson County Correctional Center
- A member of pre-release and initial classification committees
- Prepares parole reports and makes release recommendations
- Responsible for the Pre-Parole Program
- Serves legal notice to all Parole Violators
- Schedules victims and witnesses to provide testimony at Parole hearings

### **PAROLE BOARD ANALYST (Christine Slaughter)**

- A member of pre-release and initial classification committees
- Responsible for BOPP Information System
- Prepares parole reports and makes release recommendations
- Responsible for the Pre-Parole Program

### **PAROLE BOARD ANALYST (Brian Callarman)**

- Responsible for the Pre-Parole Program
- A member of pre-release and initial classification committees
- Prepares parole reports and makes release recommendations

### **PAROLE BOARD ANALYST (John Cameron-Great Falls office)**

- Responsible for the Crossroads Correctional Center, Great Falls Regional Prison, and Great Falls Transition Center
- Responsible for the Pre-Parole program
- Prepares parole reports and makes release recommendations
- Serves legal notice to all Parole Violators
- A member of the pre-release screening committee
- Schedules victims and witnesses to provide testimony at Parole hearings

### **ADMINISTRATIVE SPECIALIST (Cathy Leaver)**

- Organizes the Parole Board hearing data
- Records Parole Board dispositions
- Processes reports regarding parole and executive clemency
- Distributes all mail
- Schedules victims and witnesses to provide testimony at Parole hearings

### **ADMINISTRATIVE ASSISTANT (Lisa Wirth)**

- Prepares placement investigations and release documents
- Prepares correspondence and reports
- Maintains Board confidential files and records dispositions

### **ADMINISTRATIVE SUPPORT (Dotsie Lucier)**

- Answers telephone calls and processes all mail
- Files pertinent material in inmate files as necessary

### **ADMINISTRATIVE SUPPORT (Michelle Oliver)**

- Responsible for the management of over 2,500 inmate files
- Files pertinent material in inmate files as necessary

## FUNDAMENTALS

The Montana State Board of Pardons and Parole is composed of seven members. Each member is appointed by the Governor for staggered four year terms subject to confirmation by the State Senate. The Governor appoints the Chair in accordance with State law. The Vice-Chair is elected in an executive session by the members.

The Board was created by legislative action in 1955. There has been some form of parole within Montana since 1889. In 1979, 1995, and 2003, the addition of auxiliary members was provided by the legislature.

The Board is part of the Executive Branch of State government and is attached to the Department of Corrections for administrative purposes only. The Board performs quasi-judicial and policy-making functions independently of that Department.

### DEFINITIONS:

"Board" – the Board of Pardons and Parole as authorized in 2-15-2302 and 46-23-104, MCA.

"Capital Offense" – an offense for which the District Court imposed the death penalty.

"Conditional Release" – the process by which eligible inmates sentenced to the Department of Corrections may be released from a correctional facility to serve their sentences in the community by a decision of the Department of Corrections Administrators.

"Controlling Sentence" – the sentence(s) that, based on a District Court Judgment, requires the longest period of time served to parole eligibility.

"Dead Time" – the period of time from the date a parole violation warrant is issued to the date a violator is arrested on the warrant and the determination whether this time should be counted as time under the term. This also includes time served in another state for a crime committed on parole.

"Department" – the Department of Corrections as authorized in 2-15-230, MCA.

"Designed Capacity" – the maximum average daily inmate population of a correctional institution as established by legislative appropriation.

"Discharge" – the release from custody upon completion of a term. *Flat discharge* is the release without a period of supervision to follow. *Discharge balance suspended* is the release with a period of probation to follow.

"Good Time Allowance" – number of days awarded by the Department of Corrections which operate as a credit on the inmate's sentence. (Repealed, effective January 1997).

"Hearing" – the personal appearance of an inmate before the Board for release consideration, Executive Clemency, revocation, or rescission.

"Inmate/Prisoner/Offender" – any person sentenced by a State District Court to a term of confinement in a State correctional institution or program.

"Maximum Time" – those sentences or terms that invoke the 17½-year parole eligibility rule; *no inmate shall serve more than 17½ years to parole eligibility on a time sentence* (eliminated by the 1995 Legislature).

"Parole" – the release of an inmate into the community prior to the completion of a sentence subject to the orders of the Board and the supervision of the Department.

"Parole Certificate" – the document signed by the Board Chairman and Executive Director authorizing the release from confinement to parole.

"Parole Eligibility" – the earliest possible date a person may be released from confinement to parole supervision.

"Rescission" – an action of the Board that annuls or voids a prior release disposition.

"Review" – the informal administrative process conducted by a hearing panel via teleconference that entails a paper review to consider the progress and conduct of an inmate and to determine if further consideration is warranted.

"Revocation" – an action by the Board to consider taking away a previously granted parole after probable cause has been determined that a parolee had violated the rule(s) of parole.

"Rules" – the conditions, limitations, and restrictions of parole supervision.

"Sentence" – the penalty imposed by a particular District Court for a specific felony offense.

"Commencement of Consecutive Sentence" – to begin service of a consecutive sentence (sentence to follow) which was imposed after Board action and for crimes committed in prison, while on parole, or on furlough. Commencement is calculated for parole eligibility purposes only.

"Term" – the total period of time for which an inmate was ordered to serve in a State correctional institution or program.

"Victim" – a person who suffers loss of property, bodily injury, or death as a result of: the commission of an offense; the good faith effort to prevent the commission of an offense; the good faith effort to apprehend a person reasonably suspected of committing an offense; the estate of the deceased or incapacitated victim or a member of the immediate family of a homicide victim; a governmental entity that suffers loss of property as a result of the commission of an offense in this state; or an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss. A victim does not include a person who is accountable for the crime arising from the same transaction.



## PARAMOUNT OBJECTIVES OF THE BOARD

1. The primary objective of the Board is to carefully review each eligible prisoner nearing the end of a period of incarceration set by the court. Parole may be granted when, in the Board's opinion, there is a reasonable probability that the prisoner can be released without detriment to the inmate or community.
2. To make every feasible effort to bring about the rehabilitation of those inmates incarcerated or released.
3. To allow, when requested, a victim to present a statement concerning the effects of the crime on the victim or family including, but not limited to, their opinion on release of an offender.
4. To return promptly to custody offenders who are unable or unwilling to adjust to parole supervision and violate conditions of their release.
5. To protect society by not releasing inmates shown to be a menace to society, except a possible release of an inmate who would soon be discharged without supervision at the end of an inmate's sentence and it is thought better to return the inmate to society under strict supervision.
6. To recommend pardons and/or commutation of sentences to the governor for those individuals considered appropriate for this extraordinary privilege.
7. To approve grants of conditional discharges from supervision and set conditions of such.

## PAROLE: A FLEXIBLE SYSTEM OF REHABILITATION AND PUNISHMENT

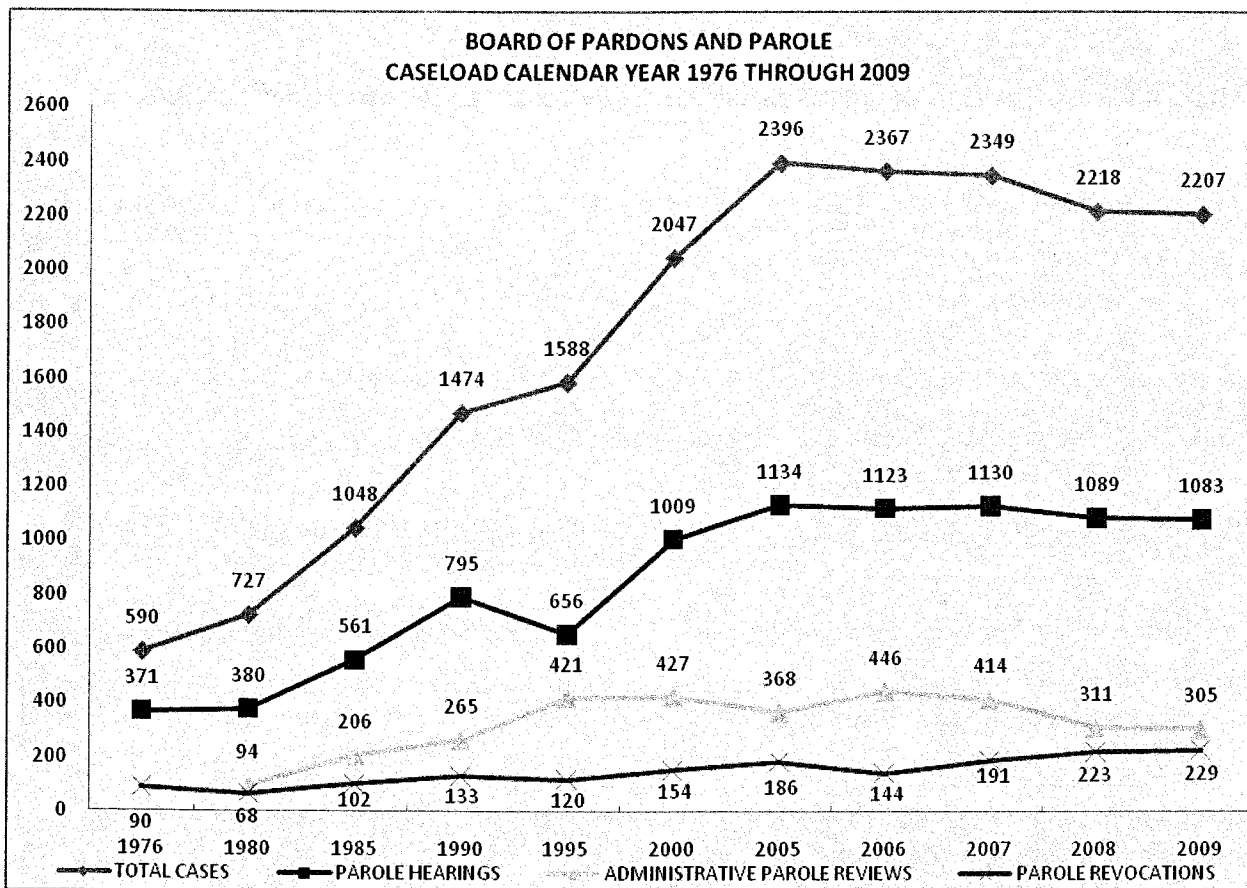
Parole pertains to **how** punishment is administered, not **how much** punishment is administered. A parole system mandates earned release; a system without parole means automatic release. The courts and legislature set the minimum and maximum amount of prison time to be served. The current sentencing structure is a flexible system for punishing offenders and protecting the public.

An offender is required to serve 25% of the sentence entirely in custody. By setting a sentence considering parole eligibility established by law, the Judge can ensure a period of incarceration that he or she feels is appropriate for the punishment of the offender and the safety of the community.

Once an offender becomes parole eligible, the remaining time on the term can be served either in custody or in the community, depending upon the severity of the crime and risk presented by the offender. By denying parole the Board can significantly lengthen the time served for dangerous offenders. The Board has the advantage of receiving any new information, which may have come to light about the offender, studying the prisoner's behavior in prison, and hearing personally from victims and criminal justice authorities as they review the case. Members also have the advantage of months and years of gathering information that truly assesses an offender's record and character.

If the Board determines parole is appropriate, an offender can serve a portion of the term in the community under supervision and the requirements set by the Board. If an offender violates the conditions, the Board can quickly return the offender to custody and require them to serve the remainder of the term in prison.

Courts have consistently ruled that parole in Montana is a **privilege and not a right** and the Board has been afforded very broad discretion in making decisions. The Board of Pardons and Parole is required to give offenders meaningful access to the members and, when parole is denied, the Board must issue a written decision informing the offender in what respects he or she falls short of qualifying for parole.



“Total Cases” – The number of total decisions made by the Board.

“Parole Hearings” – The personal appearance of an inmate before the Board for release consideration. This includes initial appearances and reappearances. The Board frequently uses video conference to conduct these hearings.

“Administrative Parole Reviews” – The informal administrative process conducted by a hearing panel via teleconference that entails a paper review to consider the progress and conduct of an inmate and to determine if further consideration is warranted.

“Parole Revocation” - An action by the Board to consider taking away a previously granted parole after probable cause has been determined that a parolee had violated the rule(s) of parole.

## HISTORY OF THE BOARD OF PARDONS AND PAROLE

Creation of the Board of Pardons (1889). The origins of the Board of Pardons and Parole can be traced to the 1889 Montana Constitution. Article VII, Section 9, of the constitution authorized the Governor to grant pardons, remit fines and forfeitures, and commute punishments subject to the approval of a Board of Pardons. The constitution directed the Legislature to provide for the appointment, composition, powers, and duties of the Board.

Parole by the Board of Prison Commissioners (1907). Sixteen years later, the Legislature provided for the parole of prisoners (Ch. 95, L. 1907). The 1907 legislation authorized the State Board of Prison Commissioners, consisting of the Governor, Secretary of State, and Attorney General, to parole an inmate of the Montana State Prison (MSP).

Parole and Executive Clemency Functions Merged (1955). For the next 48 years, a dual board system existed. The Board of Pardons reviewed Executive Clemency matters, while the State Board of Prison Commissioners handled paroles. In 1955, however, the functions of the two boards were combined and assigned to a reconstituted Board of Pardons (Ch. 153, L. 1955). The Board consisted of three members appointed by the Governor with the advice and consent of the Senate. Members served staggered six-year terms.

Board Transferred to Department of Institutions (1971). Under the 1971 Executive Reorganization Act, the Board of Pardons was transferred to the Department of Institutions (now called the Department of Corrections) for administrative purposes only. In addition, the position of State Director of Probation and Parole was renamed the Administrator of Probation and Parole (Ch. 272, L. 1971).

Change in Montana Code Annotated (1995).

- (A). The 1995 Legislature eliminated good time for the purposes of parole eligibility effective April 13, 1995, and entirely effective January 31, 1997. **Unless the court otherwise orders, all inmates will serve 25% of their sentence prior to becoming parole eligible and will serve 100% of their sentence to discharge.** The Legislature also eliminated the provision that requires parole appearance on a time sentence after 17½ years and required 30 years to be served on a life sentence. Offenders previously served approximately 15 to 18 years on a life term. Additionally, the 1995 Legislature eliminated the 120-day, early consideration and non-dangerous/dangerous designation. This applies to crimes committed **on or after April 13, 1995.**
- (B). The Board of Pardons was renamed the Board of Pardons **and Parole** because the majority of the Board's functions directly pertain to parole issues. (See Figure 1)

Changes in Montana Code Annotated (1999). The 1999 Legislature changed requirements of offenders to provide DNA samples to be released on parole. Additionally, the Legislature allowed the Court to commit an offender to the Department of Corrections for a period not more than 5 years, with the remainder suspended. The Legislature authorized the Board to release information and allow public records to be reviewed. The Board was also allowed to hold any parole hearing or revocation hearing via an interactive videoconference and allowed the holding of an administrative hearing via a telephone conference.

Changes in Montana Code Annotated (2003). The 2003 Legislature authorized the appointment of two member hearing panels which have the full authority and power of the Board to order the denial, grant, or revocation of parole. Additionally, two auxiliary members were added and all members are now required to receive training in American Indian culture and problems.